



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### PIEDMONT REGIONAL OFFICE

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L. Preston Bryant, Jr.  
Secretary of Natural Resources

David K. Paylor  
Director

Gerard Seeley, Jr.  
Regional Director

## **STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO DANN MARINE TOWING, LC**

### **SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code §§ 62.1-44.15(8a) and (8d), between the State Water Control Board and Dann Marine Towing, LC for the purpose of resolving certain violations of environmental law and regulations.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "VA Code" means the Code of Virginia (1950), as amended.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
6. "Order" means this document, also known as a Consent Special Order.

7. "Dann Marine" means Dann Marine Towing, LC located at 299 Boatyard Road in Chesapeake City, Maryland.
8. "DEM" means the Virginia Department of Emergency Management.
9. "USCG" means the United States Coast Guard.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. Dann Marine owns and operates a transportation company located in Chesapeake City, Maryland.
2. On November 28, 2005, Dann Marine had control and custody of a barge, containing barrels of liquid asphalt. The company was transporting the barge up the James River when it reportedly ran aground on an uncharted obstruction in the navigation channel at Mile Marker 157, in Henrico County.
3. The USCG National Response Center was notified that the barge had grounded at 3:35 AM. One hour later the, the USCG was notified that the barge had sustained structural damage in its cargo section and began leaking heated liquid asphalt into the James River.
4. The USCG National Response Center notified DEM of the incident, who in turn immediately notified DEQ.
5. The USCG assumed command of the scene; responders deployed a boom, encircling the tug boat and barge, and recovery and cleanup operations commenced. The liquid asphalt remaining in the barge was off loaded onto another barge; the asphalt, which had solidified upon contact with the frigid waters of the James River, was recovered from the bottom of the James River using a clamshell crane.
6. The USCG determined that cleanup operations of the James River were reported complete by December 15, 2005.
7. The firm that performed the cleanup and recovery operation reported that approximately 155 of the 157 tons of asphalt that had leaked into the river had been recovered and recycled by a local business enterprise rather than placing the material in a landfill.
8. On August 21, 2006, a Notice of Violation (NOV) was issued for an unpermitted discharge of a petroleum product to state waters and for failure to report to the discharge directly to the State as required.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders Dann Marine, and Dann Marine voluntarily agrees to pay a civil charge of **\$45,000** within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall note that it is being made pursuant to this Order. Payment shall be by check, certified check, money order, or cashiers check payable to "Treasurer of Virginia" and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Dann Marine, for good cause shown by Dann Marine, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the NOV issued on August 21, 2006. This Order shall not preclude the Board or the Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the property as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
3. For purposes of this Order and subsequent actions with respect to this Order, Dann Marine admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Dann Marine consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Dann Marine declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by Dann Marine to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Dann Marine shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Dann Marine shall show that such circumstances were beyond his control and not due to a lack of good faith or diligence on his part. Dann Marine shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

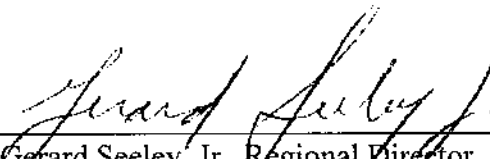
9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Dann Marine. Notwithstanding the foregoing, Dann Marine agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:

- a. Dann Marine petitions the Director or his designee to terminate the Order after he has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order: or
- b. The Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Dann Marine.


Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Dann Marine from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By the signature below, Dann Marine voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of July 31, 2008.

  
\_\_\_\_\_  
Gerard Seeley, Jr., Regional Director  
Department of Environmental Quality

Dann Marine voluntarily agrees to the issuance of this Order.

By:   
\_\_\_\_\_  
Date: 8/10

State of Maryland

City/County of \_\_\_\_\_

The foregoing document was signed and acknowledged before me this \_\_\_\_\_ day of

February, 2008, by Edgar Jose Pina, who is  
(name)

VP of Dann Marine, on behalf of the company.  
(title)

Michael G. Pina  
Notary Public

My commission expires: 9/1/2010